

Baltimore County Ethics Commission

Advisory Opinion 22-02

The Baltimore County Ethics Commission (the “**Commission**”) issues this Advisory Opinion in response to an inquiry made by a Baltimore County employee (the “**Inquirer**”) as to whether it would be permissible under the Baltimore County Ethics Code (the “**Ethics Code**”) for he or she to hire a certain individual (the “**Potential County Employee**”) to fill an open position in the HR department of Baltimore County. The Inquirer has informed the Commission that if hired by Baltimore County, the Potential County Employee would have the title of “HR Trainer,” and provided the Commission with the job description for this position. The Inquirer has further informed the Commission that the Potential County Employee is a part-time instructor at the Community College of Baltimore County (“**CCBC**”), which is a party to a contract with the County (the “**CCBC Contract**”). The Inquirer has asked the Commission whether, under the Ethics Code, the Potential Employee would be ineligible for the HR Trainer position if he or she continues his or her part-time work for CCBC.

The Commission considered the request for Advisory Opinion and concluded that the Employee is not barred by the Ethics Code from simultaneously employment by Baltimore County as an HR Trainer and by CCBC as a part-time instructor for CCBC, subject to two caveats: He or she must not divulge any confidential information pertaining to Baltimore County while serving as a part-time instructor for CCBC and he or she must recuse themselves from participation in any matters as a Baltimore County employee which impact CCBC.

Dual Employment

In considering whether the Ethics Code precludes the Potential County Employee from concurrent employment as an adjunct part-time instructor with CCBC and an HR Trainer with Baltimore County, the Commission carefully reviewed Subtitle 3 of the Ethics Code (“Prohibited Conduct and Interests”).

Two provisions under Subtitle 3 of the Ethics Code address concurrent (or secondary) employment: §7-1-302 (“Restrictions on Employment, Financial Interests, and Affiliations”) and §7-1-303 (“Employment of Public Official by Party to Contract”). Section 7-1-302 applies where a Baltimore County employee has secondary employment with an entity which has a contract with the Baltimore County employee’s agency or department. By contrast, §7-1-303 applies only where the contract “binds or purports to bind the [C]ounty.” *Id.* The Commission noted that the County (as opposed to the HR Department) is a party to the CCBC Contract, and the CCBC Contract binds or purports to bind the County. The Commission concluded that §7-1-303 is applicable here because the County is a party to, and is bound by, the CCBC Contract. By contrast, the HR Department is not a party to a contract with CCBC; therefore, §7-1-302 is not applicable here.

Having determined that §7-1-303 is the applicable provision, the Commission next considered whether this provision prohibits dual employment in the current situation. The Commission concluded in the negative. Section 7-1-303 prohibits dual employment only where the employee’s duties pursuant to his or her County employment “include matters substantially relating to or affecting the subject matter of the contract” between the County and the outside

employer. Here, the Potential County Employee's duties with the County are as an HR Trainer. Those duties exist separate and apart from the County's contract with CCBC. By way of example, termination of the County's contract with CCBC would not, to the Commission's knowledge, impact the performance of the Potential County Employee's duties with the County as an HR Trainer. Accordingly, the dual employment is not prohibited by §7-1-303.

Participation Prohibitions

The Commission also considered whether Section 7-1-301 ("Participation Prohibitions") would require Employee from recusing himself or herself from certain decisions in his or her role as a Baltimore County employee. Section 7-1-301 requires a public official¹ to recuse himself or herself from participating in a "matter" if he or she has an interest in the matter or if he or she has a contract with an entity which is a party to a "matter. Specifically, it provides, in pertinent part:

§7-1-301 – PARTICIPATION PROHIBITIONS.

(a) *Prohibitions.* Except as otherwise provided in subsection (c) of this section, a public official may not participate in a matter if:

(1) **The public official** or a qualified relative of the public official **has an interest in the matter** and the public official knows of the interest.

(2) **Any of the following is party to the matter:**

* * * * *

(iv) If the contract reasonably could be expected to result in a conflict between the private interest and the official county duties of the public official, **a business entity that is a party to a contract with:**

(1) **The public official;** or

(2) If known to the public official, a qualified relative of the public official.

(Emphasis added).

Here, the Commission has determined that §7-1-301(a) would prohibit the Prospective County Employee from participating on behalf of the County, in any matter involving CCBC since, as an employee of CCBC, it could reasonably be expected that he or she would have an interest in the success, longevity, financial stability, and increased stature of CCBC. Thus, the Commission has concluded that the Prospective County Employee should refrain from participating on behalf

¹ Once hired by the County, the Potential County Employee would fall is within the definition of "public official" as that term is used in the Ethics Code. *See* Ethics Code §7-101(o)(definition of "public official" includes "an employee of the county."

of the County in any decision-making, advisory, administrative, financial, or other type of function involving CCBC.

Confidentiality

With respect to the issue of confidentiality, the Commission first states that, like all Baltimore County employees, Employee is subject to the requirement of the Ethics Code that he or she not disclose or use confidential information, *i.e.*, non-public information acquired by reason of his or her employment of Baltimore County, except in the course of performing his or her official duties for Baltimore County. Section 7-1-307 of the Ethics Code provides:

§7-1-307 – DISCLOSURE OF CONFIDENTIAL INFORMATION.

Except in the discharge of an official duty, a public official may not disclose or use confidential information acquired by reason of the public official's public position and not available to the public:

- (1) For personal economic benefit; or
- (2) For the economic benefit of another.

If hired by Baltimore County, the Prospective County Employee must ensure that he or she does not, in serving as an instructor for CCBC, disclose any confidential information which was acquired by reason of his or her Baltimore County employment and which is not available to the public.

Accordingly, although the Potential County Employee may work for the County as an HR Trainer in the HR Department concurrently with holding a position at CCBC, he or she may not disclose to CCBC non-public information that he or she learned by reason of his or her Baltimore County employment, and he or she should recuse from participation in any decision-making by the County relating to CCBC. For the avoidance of doubt, the Potential County Employee should not participate on behalf of the County in any matter that involves CCBC, including but not limited to procurement or contract-related decisions, or any other matter that may impact CCBC financially or impact the CCBC Contract.

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